IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5263 OF 2005

M/s. Tasleem Constructions ..Petitioner.

Versus

Smt. Hajirabegam Nissar & Ors. ..Respondents.

Mr. R.S. Apte with M.R. Bubna for the Petitioner.

Mr. R.P. Mudholkar for Respondents 1 to 3.

Mrs. Neeta P. Karnik for Respondent No.3.

CORAM : S. A. BOBDE, J.

DATED : 11TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Learned counsel for the respondents waives service of rule for the Respondents.

Heard by consent.

2. The petitioner has challenged the order dated

10.06.2005 passed by the Civil Judge, Sr.Dvn., Thane, directing issue of summons to witnesses as prayed for by the respondents. The learned counsel for the petitioner contended that the impugned order is illegal in view of the fact that the application for summoning these witnesses is not in accordance with the Order 16, Rule 1 (2) of the CPC. In that application it is not stated the purpose for which these witnesses are sought to be summoned. This submission is not correct. On a perusal of the application Exh. 125 dated 20th April, 2005, it seems that the applicant has prayed for issue of witness summons since he has been directed to lead evidence of illegal occupancy. There are clear averments to that effect and further the applicant prayed that the witness summons to be issued to the witnesses to represent the validity of the documents related to the occupancy of room/shop premises mentioned in the witness list and the capacity in which they are conducting the business.

3. In these circumstances, there is no merit in the petition. The petition is, therefore, dismissed.

Dt. 11.08.2005 (S.A. BOBDE,J.)

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